

ORDINANCE NO. 3683

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, DETERMINING THE FINAL ASSESSMENT REIMBURSEMENT AREA AND PRO RATA SHARES OF REIMBURSABLE COSTS IN CONNECTION WITH THE SILVER CITY CONSTRUCTION, INC., LATECOMER AGREEMENT; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Chapter 35.72 of the Revised Code of Washington authorizes cities to enter into latecomer agreements for the purpose of providing partial reimbursement of certain street improvement costs paid by a private party; and

WHEREAS, Silver City Construction, Inc., performed certain street improvements consisting of asphalt concrete paved street and storm drainage on 72nd Avenue West, Edmonds, Washington, which improvements were required by ordinance to be constructed;

WHEREAS, Silver City Construction, Inc. applied to the City for a latecomer agreement for reimbursements of certain street improvements consisting of asphalt concrete paved street and storm drainage on 72nd Avenue West, Edmonds, Washington as shown on Exhibit A; and

WHEREAS, Chapter 35.72 of the Revised Code of Washington sets forth the process for latecomer agreements; and

WHEREAS, the City Engineer determined that the application of Silver City Construction, Inc. met the criteria set forth in Chapter 35.72 of the Revised Code of Washington, and approved the application; and

WHEREAS, the City Engineer made a preliminary determination of the assessment reimbursement area and pro rata share of costs to affected property owners by

selecting a method of cost apportionment based on the benefit of the improvements to the affected property owners; and

WHEREAS, in accordance with RCW 35.72.040(2), the City provided notice by certified mail of the City Engineer's preliminary determination of the assessment reimbursement area and pro rata share of costs to affected property owners; and

WHEREAS, none of the affected property owners requested a public hearing before the City Council within the time required to challenge the City Engineer's preliminary determination; and

WHEREAS, the City Engineer's determination of the assessment reimbursement area and pro rata share of costs is now subject to no further challenge by the affected property owners; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO ORDAIN
AS FOLLOWS:

Section 1. Assessment Reimbursement Area. The City Council hereby adopts as its final determination the preliminary determination of the assessment reimbursement area as recommended by the City Engineer and as identified on Exhibit B attached hereto and incorporated herein by this reference.

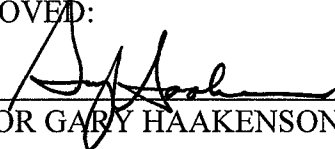
Section 2. Reimbursable Costs. The City Council hereby adopts as its final determination the total cost calculations, allocations among the benefited properties, and pro rata shares of reimbursable costs as recommended by the City Engineer and as identified on Exhibit C attached hereto and incorporated herein by this reference.

Section 3. The Mayor is directed to execute, on behalf of the City of Edmonds, the reimbursement contract with Silver City Construction, Inc., a copy of which is attached hereto as Exhibit D and incorporated herein by this reference.

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.


Section 5. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of the attached summary, which is hereby approved.

APPROVED:



MAYOR GARY HAAKENSEN

ATTEST/AUTHENTICATED:



CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 

W. SCOTT SNYDER

| | |
|-----------------------------|------------|
| FILED WITH THE CITY CLERK: | 03/28/2008 |
| PASSED BY THE CITY COUNCIL: | 04/01/2008 |
| PUBLISHED: | 04/06/2008 |
| EFFECTIVE DATE: | 04/11/2008 |
| ORDINANCE NO. <u>3683</u> | |

SUMMARY OF ORDINANCE NO. 3683

of the City of Edmonds, Washington

On the 1st day of April, 2008, the City Council of the City of Edmonds, passed Ordinance No. 3683. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, DETERMINING THE FINAL ASSESSMENT REIMBURSEMENT AREA AND PRO RATA SHARES OF REIMBURSABLE COSTS IN CONNECTION WITH THE SILVER CITY CONSTRUCTION, INC., LATECOMER AGREEMENT; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

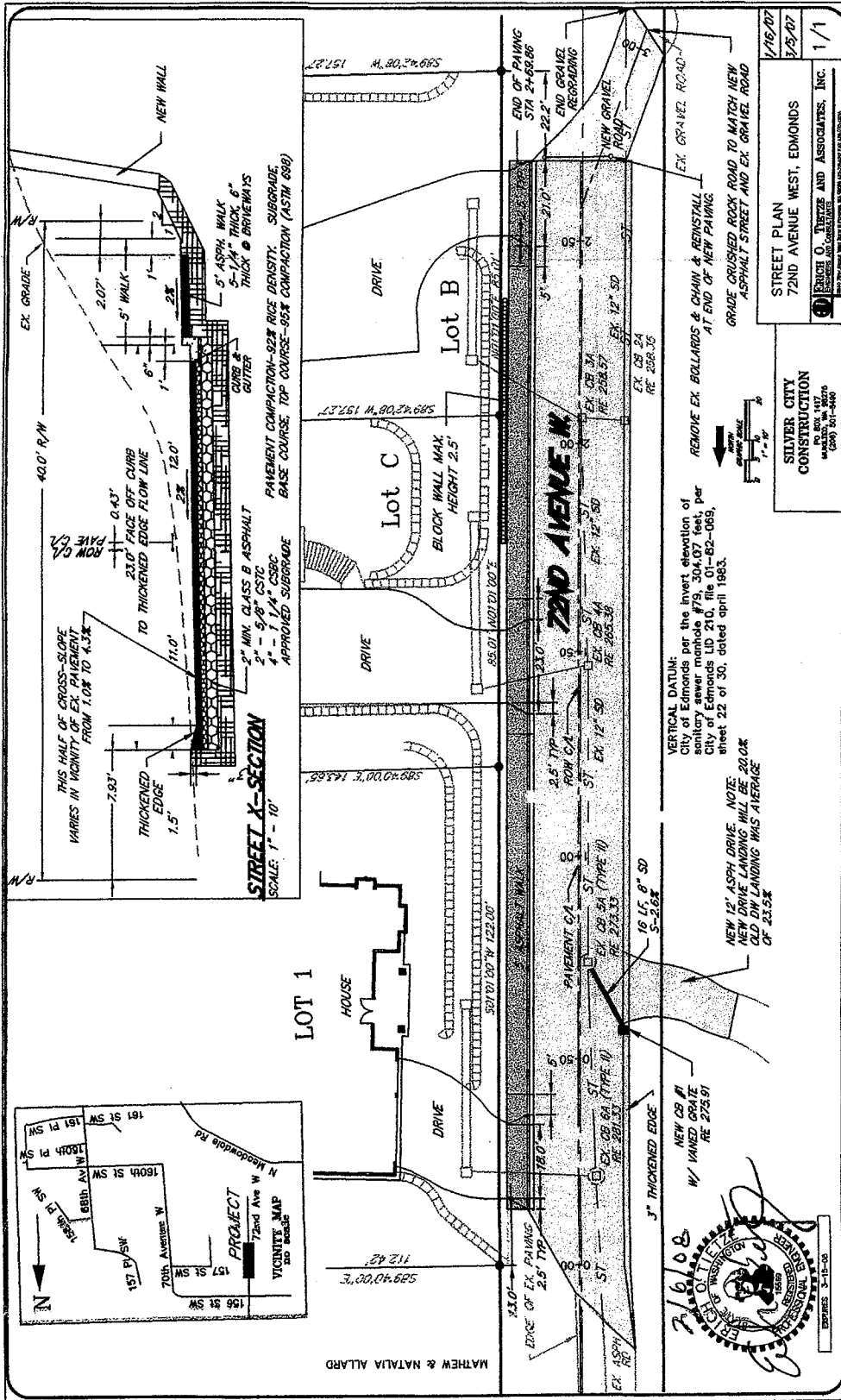
The full text of this Ordinance will be mailed upon request.

DATED this 2nd day of April, 2008.



CITY CLERK, SANDRA S. CHASE

EXHIBIT A



ASSESSMENT AREA

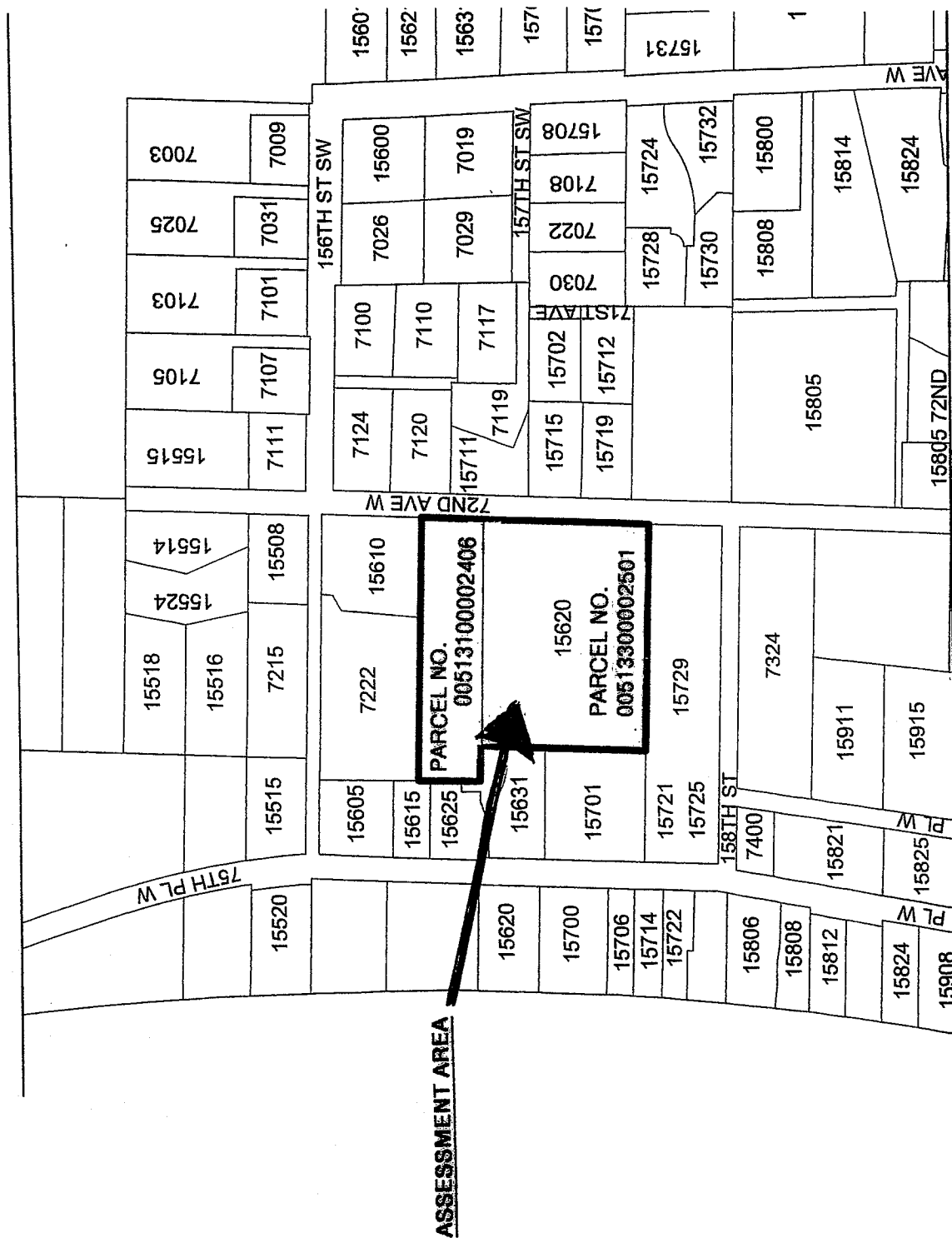


EXHIBIT C

In accordance with RCW 35.72.030, the City of Edmonds has determined that the reimbursement share for certain street improvements consisting of asphalt concrete paved street and storm drainage on 72nd Avenue West, Edmonds, Washington, which improvements were required by City ordinance to be constructed, by Silver City Construction, Inc., shall be \$331.72 per lineal foot of property frontage abutting the improvements.

Accordingly, the proposed reimbursement shares for the affected properties are as follows:

Tax Parcel No. 00513300002501: 225 LF X \$331.72 = \$74,637.00.

Tax Parcel No. 00513100002406: 45 LF X \$331.72 = \$14,927.40.

**CONTRACT FOR REIMBURSEMENT
OF
STREET CONSTRUCTION COSTS
72ND AVENUE WEST, EDMONDS, WA**

THIS AGREEMENT, made and entered into this 4th day of April, 2008, by and between the City of Edmonds, a municipal corporation, hereinafter referred to as the "City," and Silver City Construction, Inc., hereinafter referred to as "Developer."

WHEREAS, Developer has heretofore constructed at Developer's own expense, certain street improvements consisting of asphalt concrete paved street and storm drainage (hereafter "street improvements"), on 72nd Avenue West in the vicinity of properties addressed as 15711, 15715, and 15719 72nd Avenue West, Edmonds, Washington, at a total cost of one hundred seventy-nine thousand one hundred twenty-seven dollars and twelve cents (\$179,127.12); and

WHEREAS, the City, in accordance with the provisions of RCW 35.72, agrees that Developer may be reimbursed for a pro rata share of the cost of such construction of these street improvements from those owners of real estate adjacent to said street improvements, but which owners have not borne a share of the cost of such improvement as so installed;

NOW, THEREFORE, it is hereby mutually agreed and covenanted by and between these parties hereto as follows:

1. Developer does hereby covenant and warrant that Developer has paid in full the entire costs of construction and installation of said street improvements, according to the standards of construction of the City, and to the satisfaction of the City Engineer.
2. Developer acknowledges that he has previously relinquished to the City all right, title and interest in those public street improvements as more fully detailed upon Exhibit A.
3. In consideration of Developer providing said street improvements, the City hereby agrees that, for a period of fifteen (15) years from and after August 27, 2007, no person, firm, corporation, or other entity being the owner of real property adjacent to these street improvements (i.e., properties within the assessment area) as delineated in Exhibit B shall be granted approval to subdivide said property or issued a permit for any development upon said property for which the Edmonds Community Development Code would require, as a condition of approval, the construction of similar street improvements were they not already constructed by Developer, without first paying to the Developer, a

pro rata share (reimbursement share) of the construction cost set forth in this contract, calculated as follows:

Three hundred thirty-one dollars and seventy-two cents (\$331.72) per lineal foot of property having frontage abutting the 72nd Avenue West street improvements.

4. The City agrees that, upon application of an owner of real property adjacent to these street improvements (i.e., properties within the assessment area) as delineated in Exhibit B for subdivision of said property or for a building permit for any development upon said property, for which the Edmonds Community Development Code would require, as a condition of approval, the construction of similar street improvements were they not already constructed by Developer, the owner of said property (applicant) shall be referred to the Developer for payment of the pro rata share (reimbursement share) due the Developer in accordance with this contract. The City shall inform the applicant of the amount required to be paid by the applicant to the Developer. It is the intention of the parties that, as a condition of approval, and prior to approval of a subdivision or issuance of a building permit, the applicant shall be required to provide to the City a notarized document signed by the Developer (heirs, successors, or assigns) that satisfactory arrangements have been made for payment of the applicant's reimbursement share, as established by this contract, to the Developer.

5. In the event the Developer agrees to periodic payment by an applicant for the applicant's reimbursement share, and the applicant subsequently thereafter breaches, the parties agree that the City will not be a party to resolving said breach, will not be required to take any action whatsoever in regards to said breach, and that such breach shall be a civil matter between the applicant and the Developer.

6. Properties subject to the requirements of this contract are set forth on Exhibit B attached hereto, and incorporated herein by this reference as if set forth in full. Owners of property within the above referenced area are hereby notified of the payment requirements set forth herein.

7. The 15 year term of this agreement may be extended by agreement of the parties for a time not to exceed the duration of any moratorium, phasing ordinance, concurrency designation, or other governmental action that prevents an individual from making permit application(s) for any new development within the benefit area for a period of six months or more. Any such extension shall be in the form of a written addendum to this agreement which specifies the duration of the extension, shall be approved by the parties hereto, and shall be recorded with the Snohomish County auditor. Any property owner who is subject to the original notification requirements of RCW 35.72.040 shall be notified of the extension in the same manner as that statute

provides for original notification regarding preliminary determination of the assessment reimbursement area and methodology.

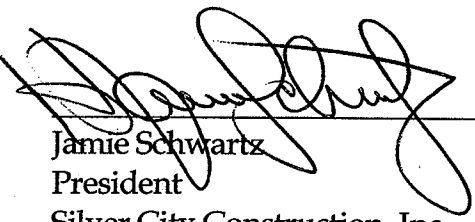
8. The parties agree and understand that the execution of this contract by the City is a discretionary act for the sole benefit of the Developer. In recognition of the non-mandatory nature of the City's agreement, Developer agrees that, in the event, whether an oversight or otherwise, an application for subdivision or building permit is approved without appropriate arrangements being made for payment of the monies to the Developer, the City shall have no responsibility to Developer for the failure to comply with the terms and provisions of this contract, nor be under any responsibility to terminate, suspend, revoke, disapprove, or otherwise act upon any approved subdivision or issued permit or to prohibit or otherwise limit the use of the street improvements by the applicant for said subdivision or building permit.

9. In the event any person brings suit against the City for a refund of any sums paid pursuant to this contract, Developer agrees to indemnify, defend, and hold harmless the City from any judgment and shall pay for the City's costs of suit, including sums for reasonable attorney's fees. This promise to indemnify shall not include any claim, loss or liability caused by the sole negligence of the City or its agents.

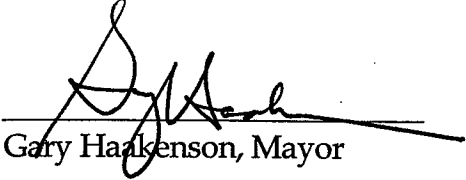
10. The Developer shall, every two years from the date of execution of this contract, provide the City with information regarding the current contact name, address, and telephone number of the Developer (heirs, successors or assigns) or his designated representative.

11. This contract shall be recorded with the Snohomish County Auditor. Recording costs shall be borne by Developer.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 4th day of APRIL, 2008


Jamie Schwartz
President
Silver City Construction, Inc.

CITY OF EDMONDS

By 
Gary Harkenson, Mayor

ATTEST/AUTHENTICATED:

Sandra S. Chase
Sandra S. Chase, City Clerk

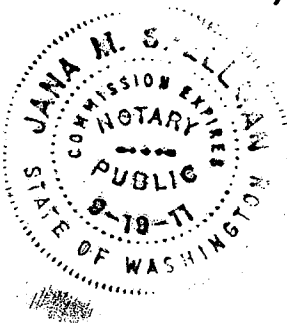
Approved as to Form:
Office of the City Attorney:

W. Scott Snyder
W. Scott Snyder

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Jamie Schwartz is the person who appeared before me, and said person acknowledged that he was authorized to execute the instrument and acknowledged it as President of Silver City Construction, Inc. to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED: April 4, 2008



Jana M. Spellman
(Signature)

JANA M. SPELLMAN
(Print Name)

NOTARY PUBLIC

My appointment expires: 9-19-11

[illegible]

ASSESSMENT AREA

